

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 123 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE Y.B.BHATT
and
Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : YES
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? :

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DHULAJI BHIKHAJI KHANT

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 123 of 1995
MR JV JAPPEE for the Petitioner
MR KT DAVE, APP for the Respondent
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CORAM : MR.JUSTICE Y.B.BHATT
and
MR.JUSTICE J.R.VORA

Date of decision: 18/07/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE J.R.VORA)

1. This Appeal is preferred by the accused of Sessions Case No.67/1994 of the Court of Sessions, Sabarkantha at Himmatnagar against the judgment dated 21st December, 1994 of the learned Additional Sessions Judge, convicting the present appellant for the offence under Section 302 of the Penal Code and sentencing him to imprisonment of life and for fine of Rs.500=00 and in default to undergo Rigorous Imprisonment of six months.

2. The facts reveal that the complainant of this case Babuji Manaji Parmar is a resident of Village Katwad. His sister Tejalben was married to the present appellant 10 years prior to the date of the incident. Out of this marriage Tejalben had two children - a boy named Jasuji and a girl named Jashoda aged 10 years and 7 years respectively. The married life of Tejalben and the present appellant was not going well and whenever Tejalben used to visit her parental house, she was complaining that her husband, the present appellant was suspicious about her character and was beating her. However, in the interest of married life of Tejalben her relatives persuaded her to stay at her in-laws. In the month of January previous to the incident Tejalben visited her parents and again complained that she had been beaten and tortured by the appellant. On 14th February, 1994 at about 10:00 p.m. the complainant was informed that Tejalben was burnt and was kept at Village Kadoli. After obtaining an Ambulance Van from Himmatnagar Town Babuji went to Village Kadoli and noticed that Tejalben was burnt all over her body and was fully conscious. She conveyed to Babuji that the appellant had beaten her and thereafter pouring kerosene upon her and lighting fire he closed the door and ran away. Thereafter Babuji shifted Tejalben at Himmatnagar Civil Hospital and also lodged complaint at Himmatnagar Town Police Station. Tejalben, before Dr.Bhupendra who treated her, at the first instance made a statement in the form of case history that she was burnt by her husband following a physical assault. Dying Declaration of the deceased was also recorded by the Executive Magistrate PW 6 Pravinkumar Hirabhai. During the treatment Tejalben died on that night at 22:30 hours. The complaint was registered at Himmatnagar Town Police Station. As per the information given by Dr.Bhupendra Shah an entry regarding the incident was made in the register at 13:10 hours by PSO Balwantsinh vide Entry No.27/1994. For inquiry of this entry Police Constable Jagdevsinh Vakhatsinh PW 8 also recorded the statement of the deceased at the Civil Hospital. The statement is at Ex.24. Initially, the offence against the accused was

registered under Sections 307 and 498A of the Penal Code but, on the death of Tejalben, the same was converted in Section 302 and 498A of the Penal Code. The investigation was handed over thereafter to Pratapsinh Udesinh, the then Police Inspector, Himmatnagar Town Police Station. He arrested the accused on 19th February, 1994. After investigation the charge-sheet was filed in the Court of Chief Judicial Magistrate, First Class at Himmatnagar for the offence under Sections 302 and 498A of the Penal Code against the accused and the case was committed to the Court of Sessions. Vide Ex.3, the learned Additional Sessions Judge, Himmatnagar framed charge against the accused but he pleaded not guilty to the charge.

3. After trial and hearing both the parties and recording the statement of the appellant under Section 313 of the Code of Criminal Procedure, vide judgment and order dated 21st December, 1994 the learned Additional Sessions Judge came to the conclusion that charge against the accused under Section 498A was not proved by the prosecution while prosecution established the charge under Section 302 of the Penal Code against the accused. After hearing the accused on the quantum of the punishment, the learned Additional Sessions Judge, as above said, awarded life imprisonment to the accused for the offence proved under Section 302 alongwith the fine of Rs.500=00. Being aggrieved and dissatisfied this Appeal is preferred by the appellant.

4. Learned advocate Mr.JV Japee on behalf of the appellant and the learned APP Mr.KT Dave for the State were heard at length.

5. Before we deal with the contentions raised by the learned counsel, being the first Appellate Court, it would be the prime duty of the Court to appreciate the evidence.

6. To prove the charge against the accused, PW 1 Babuji Manaji, complainant, has been examined vide Ex.6. In the complaint though he had narrated that on coming to know about the burning of his sister Tejalben he immediately visited Village Kadol and from there he shifted Tejalben to Himmatnagar Civil Hospital. He also narrated in the complaint that Tejalben had complaints against the appellant about the torture which was committed by the appellant physically as well as mentally. However, this witness though being brother of the deceased did not support the prosecution. The complaint which he filed is on record at Ex.7. PW 2

Manaji Kanaji, father of the deceased Ex.8, PW 3 Pravinbhai Manaji, brother of the deceased Ex.9 are examined but they have not supported the prosecution case. All the above witnesses, relatives of the deceased were examined to prove charges under Section 498A of the Penal Code against the appellant. So, this evidence requires to be discarded. It appears that the learned Additional Sessions Judge acquitted the appellant for the charge under Section 498A of the Penal Code, for want of clinching evidence, and in our opinion, rightly so.

7. Panchnama of the scene of offence is placed at Ex.10. Inquest Panchnama is also on record at Ex.11.

8. Relative of the deceased PW 4 Mangaji Kacharaji is examined at Ex.12 but he has also not supported the prosecution case. PW 5 Dr.Manishbhai Amraji Suvera is examined at Ex.14 for the limited purpose that he informed Himmatnagar Town Police Station that the deceased died at 10:25 p.m. on 14th February, 1994 because at that time he was incharge as Medical Officer at Civil Hospital, Himmatnagar.

9. Ex.16, Map of the scene of offence is placed on record.

10. Important witness PW 6 Pravinkumar Hirabhai is examined at Ex.17. He deposed that right from 24th November, 1983 he was serving as Deputy Mamlatdar in the office of the Himmatnagar Mamlatdar. He was also Executing Magistrate empowered to record dying declaration. On 14th February, 1994 at 13:55 hours he received a yadi, which is on record at Ex.19 that he was required to record the dying declaration of the deceased Tejalben at Civil Hospital. Yadi contained an endorsement of a doctor of Civil Hospital that the patient was conscious. He has further deposed that he reached at the Civil Hospital for recording of dying declaration at 14:10 hours. He enquired from the doctor whether the patient was conscious. The doctor affirmed that the patient was conscious, located Tejalben from General Ward of Females. Some relatives were present who were requested to go out. Thereafter, he started making queries to the deceased Tejalben. Tejalben was capable of understanding what he was asking. She offered her name as Tejalben Dhulaji Khant. After preliminary conversation she also replied that at that time she was in the Civil Hospital at Room No.2/13. Thereafter, about the incident she narrated before this witness that the present appellant on 13th February, 1994 at about 10:00 hours came to the house in drunken condition. The

appellant demanded meal for eating. The appellant also, according to her, emphasized that meal was to be served to him irrespective of whether the same was prepared or not. She further narrated that she had only prepared 'rottla's' (loafs) and not vegetables. The appellant had therefore eaten only 'rottla's'. After eating the meal, since no vegetables were prepared he picked a quarrel with her, poured kerosene on the body of Tejalben, and set her ablaze and ran away. The witness Pravinkumar Hirabhai deposed that he enquired from Tejalben that what was the cause of the incident. To which Tejalben replied that she had never quarreled with her husband but whenever her husband (present appellant) came home in drunken condition he was in the habit of finding excuses for the quarrel and so on the excuse of not preparing vegetables the appellant set her ablaze. The witness Pravinkumar Hirabhai further deposed that her declaration was read over to Tejalben and her thumb impression was obtained on the said statement, which was completed on 14:45 hours. The witness produced the original dying declaration on record at Ex.20.

11. PW 7 Balvantsinh Ranjitsinh Jetavat examined at Ex.21 is a formal witness who stated that at 13:10 hours on 14th February, 1994 Dr.Bhupendra Shah informed the Police Station that one Tejalben with burn injuries was admitted in the Civil Hospital. This witness was, at the relevant time, P.S.O. of the concerned Police Station. He made entry in the register vide Entry No.27/94. Immediately he wrote and sent a yadi to the Executive Magistrate, which is placed on record at Ex.19, for recording of dying declaration. Inquiry of this entry, at the first instance, entrusted to one Head Constable Virjibhai. But, since he was not present, the same was handed over to Head Constable Jagdevsinh Dabhi.

12. PW 8 Jagdevsinh Vakhatsinh, who recorded the statement of the deceased is examined at Ex.23. He deposed that he was entrusted with the inquiry of Entry No.27/94, which is on record at Ex.22. Accordingly, he visited the Civil Hospital, Himmatnagar for recording the statement of the deceased. When he reached at the Civil Hospital, the Executive Magistrate was recording the statement of Tejalben, so he waited outside and thereafter he went to Tejalben. Tejalben offered statement to Jagdevsinh and said that the appellant came to the house in drunken condition and when he was scolded by her, he poured kerosene from a tin upon her body and set her ablaze. She further stated in her statement that thereafter immediately the accused absconded from the house and her mother-in-law came to the house and after

wrapping quilts, etc. an attempt was made to extinguish the fire. Thereafter, she was shifted to Civil Hospital by her parents and brothers. This witness Jagdevsinh, according to his statement, obtained thumb impression of Tejalben on the statement. This witness has produced the statement of Tejalben at Ex.24.

13. PW 9 Dr.Bhupendra Manilal Shah is examined by the prosecution at Ex.25. He is the doctor who initially treated Tejalben and thereafter on her death conducted post-mortem. He stated in his deposition that on 14th February, 1995 he was on duty in Emergency Treatment Ward of Civil Hospital, Himmatnagar. At about 13:00 hours Tejalben was brought for immediate treatment. She was extensively burnt. He gave her primary treatment and asked the case-history. Tejalben stated before this witness in case-history that in a quarrel between her husband she was assaulted by her husband and thereafter she was put to fire after pouring kerosene upon her body. Dr.Bhupendra further stated that he recorded this case-history in treatment papers as given by patient Tejalben. Witness Dr.Bhupendra Shah further stated that thereafter he called mother-in-law of Tejalben and on asking separately and independently she offered case-history that while preparing fire for cooking Tejalben was burnt. He confirmed that he made an endorsement below Ex.19 yadi to the Executive Magistrate that the patient was conscious. He further states that he found 98 per cent burnt on the body of the deceased which was from first to third degree. The case was referred to the Civil Surgeon and at about 10:25 hours on that night she was declared dead by Dr.Suvera who was there on duty. The witness further stated that he was on duty until 8 O'clock at night on that day and upto that period i.e. upto 8 O'clock at night the patient was fully conscious and he was constantly in touch with the patient and was constantly treating her. The patient was properly talking till he left the hospital at 8 O'clock on that night on completion of his duty hours. This witness produced case-papers at Ex.26 which contains the history given by Tejalben and her mother-in-law as aforesaid. The doctor has further stated that during his treatment he did not administer any drug to the patient by which she would get slightest sedation or sleep. On 15th February, 1994, in pursuance of yadi of Himmatnagar Town Police Station, he conducted post-mortem report at 12:00 hours alongwith Dr.Rakesh Bansal. Post-mortem note is placed at Ex.27. From the defence side no effective cross-examination has been conducted of this witness. But, on a suggestion from the defence side, he categorically denied that a person with 98 per cent burn

injury can not remain conscious.

14. PW 10 Jashodaben, daughter of the deceased is examined at Ex.29. It appears that she would be about 7-8 years while she was deposing at the relevant time. The trial Court tried to ascertain whether this child witness was capable of understanding and deposing before the Court. Some of the questions asked by the Court were replied by her. In a question from the Court that where she was while deposing, she replied that she was in the police station and she was in the police station because she wanted to rescue her father. She stated that her mother was preparing 'rottla' and was pouring kerosene and burnt.

15. PW 11 Manuji Jawanji Khant has been examined at Ex.30. He is cousin brother of the deceased. Mostly he is examined to prove the cruelty committed by the appellant on the deceased, but the witness has not supported the prosecution case. PW 12 Manubhai Mohanlal examined at Ex.31 is a formal police witness, while PW 13 Pratapsinh Udesinh, Investigating Officer has been examined at Ex.35. He has narrated how he conducted the investigation. What is found important from his deposition is that he deposed that the appellant was absconding after the incident, which occurred on 13th February, 1994 at night. This witness Pratapsinh Udesinh further deposed that the accused was apprehended on 19th February, 1994 at 9:30 hours. On this aspect there is no cross-examination from the defence side except denial. Even in his statement under Section 313, the accused has not attempted to explain why he was absconding.

16. Learned trial Judge acquitted the appellant in respect of an offence under Section 498A of the Penal Code because the relatives of the deceased did not support the prosecution case of cruelty inflicted on the deceased before the incident. But, the trial Judge heavily relied upon the dying declaration Ex.20 and Ex.24. The trial Judge also relied upon the deposition of PW 6 Pravinkumar, PW 8 Jagdevsinh and PW 9 Dr.Bhupendra Manilal Shah and the case-papers produced by him at Ex.26. The trial Court came to the conclusion that there was no single reason to doubt the evidence of Ex.22 and Ex.24 and the above three witnesses. Hence, the trial Judge convicted the appellant under Section 302 of the Penal Code.

17. After reappreciating the evidence of PW 8 Jagdevsinh Vakhatsinh, PW9 Dr.Bhupendra Shah and PW 6 Pravinkumar Hirabhai and after taking into consideration

the statements recorded by witness Pravinkumar, Executive Magistrate and Jagdevsinh, Police Constable and also taking into consideration the case-history recorded by the doctor PW 9 at Ex.26, we are convinced that the conclusion arrived at by the trial Judge requires no interference, though we shall deal with the contentions raised on behalf of the appellant one-by-one.

18. Learned advocate Mr.Japee on behalf of the appellant vehemently, assailing dying declarations Ex.20 and Ex.24, argued that the version narrated in both the dying declarations are inconsistent and in contradiction to the material particulars leading to the alleged crime. To appreciate this contention of the learned advocate we will have to look to the documents at Ex.20, Ex.24 and Ex.26. In Ex.20 the deceased stated that on 13th February, 1994 appellant came to the house at 10 O'clock at night in drunken condition and asked for the meal irrespective of whether the same was prepared or not. The deceased had prepared only 'rottilas' and not vegetables. The appellant ate 'rottilas', and thereafter took up a quarrel with Tejalben for not preparing vegetables and poured kerosene on her body and set her on fire. While, in Ex.24 before Jagdevsinh the deceased stated that the accused appellant was in habit of coming to the house in drunken condition and was not doing any work. On the day of the incident he came to the house in drunken condition. She scolded the appellant for his drunken condition and so the accused picked up quarrel, poured kerosene on her body and set her ablaze. In case-history which is the first version given by the deceased to the doctor, which is recorded in the case paper Ex.26, the deceased has categorically stated that there was quarrel between the husband and the wife. The deceased was assaulted and thereafter the accused poured kerosene from the tin on the body of the deceased and set her ablaze. We do not see any contradiction in the circumstances leading to the alleged crime as narrated in above statements of the deceased. There is no inconsistency also as has been attempted to be magnified by the learned advocate for the appellant. So far as the incident which is the basis of the prosecution case is concerned, there is no contradiction. The basis of the prosecution case is that the accused picked up quarrel with the deceased, poured kerosene on her body and put her to fire. However, this version is consistently coming out from Ex.20, Ex.24 and Ex.26, which are the statements of the deceased. The shortest form of narration by the deceased is Ex.26, which is given before the doctor and is first in point of time. There also she has categorically stated that she was assaulted by her

husband and put her to fire by her husband. Unmistakably, the same version is stated by the deceased to the Executive Magistrate vide Statement Ex.20. The same version is confirmed by her in a statement given to Head Constable Jagdevsinh, which is at Ex.24. When we appreciate all these three statements in its totality, we find that the accused picked up quarrel with the deceased and put her to fire after pouring kerosene on her body. Whether the incident had occurred because the deceased failed to prepare vegetables or not, is not a material fact, but the material fact is as above said. Somehow, there was a quarrel and the accused poured kerosene on the body of the deceased and set her ablaze. The language of the quarrel is not important. This whole prosecution case is consistent in all the three dying declarations. On the contrary, the dying declaration i.e. Ex.20, which is taken later on after Ex.26 (medical history) contains more details as to the manner of the ghastly occurrence. By no stretch of reasoning it could be said that the deceased improved her version in both the statements at Ex.20 and Ex.24, because in one of the statements she did not say that because vegetables were not prepared the accused picked up the quarrel. In all the three dying declarations the material base of the prosecution case is that, after picking up the quarrel the accused poured kerosene and set the deceased ablaze, remains the same. So, we can not accept the contention that the dying declarations at Ex.20 and Ex.24 are inconsistent having contradiction in material particulars namely the circumstances leading to the alleged crime.

19. The later contention which the learned advocate for the appellant vehemently advanced was regarding the mental capacity of the deceased to offer dying declaration. It was argued that the deceased suffered 98 per cent burn injury. The deceased could not be in a physical state to give proper declaration. It was also stated that while Ex.20 was being recorded by the Executive Magistrate there were some relatives present and so tutoring to the deceased, can not be ruled out. No endorsement of any doctor on any of the dying declarations is obtained that the deceased was conscious as well as in a fit state of mind and physique to offer statement.

20. While we reappraise the evidence of PW 6, Executive Magistrate Ex.17, PW 8 Jagdevsinh and PW 9 Dr.Bhupendra Manilal Shah, we find that the deceased was in fit mental as well as physical condition to give the statement. It is neither a rule of law nor of prudence that each dying declaration should contain an endorsement

and a certificate of a doctor that deceased was in fit mental condition to offer dying declaration. But, it is a matter for the courts to determine, while judging the veracity of the dying declaration, whether deceased was capable of offering any statement as to the cause of his or her death. The important witness PW 9 Dr.Bhupendra Shah has stated that he was on duty on that day upto 8 O'clock at night. He also deposed that upto 8 O'clock at night on that day the patient was constantly conscious and he was in constant consultation with the deceased. The doctor further deposed that till he left the hospital after completion of duty hours at 8 O'clock at night the patient was properly talking. He further deposed that he did not administer any drug which may give sedation to the deceased. Now, on this aspect there is no effective cross-examination on behalf of the defence. When we appreciate this evidence of PW 9 Dr.Bhupendra, we are convinced that the deceased was in fit mental condition to offer dying declaration. This evidence could not be assailed by the defence either during trial or by the learned advocate for the appellant in this Appeal. On the contrary, the doctor emphatically denied the suggestion that a person with 98 per cent burn injury can not remain conscious. This is the direct evidence to come to the conclusion that the deceased was in fit state of mind. This is not enough. When PW 6 Pravinkumar Hirabhai approached the deceased at about 14:10 hours, he requested all the relatives to go out of the room of the patient. He ascertained that the deceased Tejalben was in proper condition to talk and to give reply. This witness further ascertained that the deceased was capable to understand and grasp and to give reply to the queries. The witness PW 6 Pravinkumar further deposed that the deceased was properly replying to his questions. Again this evidence leads to the finding that the deceased was in fit state of mind to answer the question. Moreover, we could not find any effective cross-examination on behalf of the defence side except denials. We could not find anything which could dislodge or discard the say of witness Dr.Bhupendra or this witness PW 6 Pravinkumar. The same is the deposition of Head Constable Jagdevsinh PW 8, who also deposed that he enquired from the deceased and deceased offered the statement. Nothing could be established by the defence in his cross-examination also to disbelieve the say of the witness PW 8 Jagdevsinh. The learned advocate for the appellant, however, could not assail the prosecution case to the extent that the dying declarations recorded by PW 6 Pravinkumar, PW 8 Jagdevsinh and PW 9 Dr.Bhupendra are concocted and not worthy of credit. It appears that the main thrust of the defence side was that the deceased was tutored by her

relatives. When we scrutinize the evidence of three witnesses carefully and when we scrutinize and scan the dying declarations at Ex.20, Ex.24 and the case-history at Ex.26, we find that there is no reason for these three independent witnesses to individually or collectively conspire against the accused and concoct tutored version of the deceased in the shape of dying declarations to push the appellant to conviction. On the contrary, we find that all these three witnesses are extremely truthful and reliable. We also find that the dying declarations recorded at Ex.20 and Ex.24 alongwith case-papers at Ex.26, wherein, case-history is recorded are reliable evidence to act upon. It also can not be said that statements Ex.24 and Ex.26 are uncorroborated. Though learned advocate for the appellant is in agreement with us to the extent that a conviction can certainly be based upon sole evidence of dying declaration if the same is reliable. Ex.20 statement gets corroboration from witness Pravinkumar PW 6. Again Ex.20 further gets corroboration from Ex.24 and witness PW 9 Dr.Bhupendra Shah. Ex.26 also gets corroboration from Ex.20 and Ex.24. Each of the three witnesses corroborate each other, because no contradiction destroying the prosecution case in the evidence could be noted. Hence in our view dying declarations Ex.20 and Ex.24 are reliable pieces of evidence, and sufficient to convict the accused for the offence charged against him under Section 302 of the Penal Code.

21. Learned advocate for the appellant cited a decision of the Apex Court in the matter of SMT.LAXMI V. OM PRAKASH & ORS. reported in AIR 2001 SC 2383 and argued that the Apex Court did not believe five dying declarations and acquitted the accused. When we read the whole decision of the Apex Court we found that the Apex Court, after appreciating five dying declarations, found that each dying declaration was suffering from infirmities, which is evident from Paragraphs-9, 11, 17 and 27. The ASI who recorded the first dying declaration could not make entries in the register in this respect. The doctor stated that the victim was administered sedative drug and she was not able to speak. The evidence of the Executive Magistrate, who recorded the dying declaration, found unreliable for the reasons recorded by the Apex Court and in these circumstances all the dying declarations were disbelieved by the Apex Court. While the facts of this case, as narrated above, go to establish that the dying declarations are amply proved by unimpeachable, reliable and credit worthy evidence by the witnesses, and hence the decision cited by the learned advocate is not useful to the appellant.

22. Learned advocate for the appellant placed reliance on the testimony of minor child Jashoda and contended that she is the daughter of the deceased and not supporting the prosecution case. But, however, on bare reading of this testimony of daughter Jashoda, it is clear that she never understood the sanctity of the deposition. The trial Court rightly did not administer oath to her. She was under an impression that she was in police station to rescue her father. It is neither helpful to the prosecution nor the defence, and in fact, is not necessary for the prosecution to rely on her at all. Though the fact remains that in her natural manner she deposed that she called her grand mother Sakuba after the incident. This fact leads to the conclusion that Sakuba, mother-in-law of the deceased was not a material witness, having no personal knowledge in respect of incident.

23. Learned advocate for the appellant then argued that in Ex.26 case-papers, the doctor also recorded the version of the mother-in-law of the deceased, who said that the deceased was burnt while preparing fire for cooking. Learned advocate contended that mother-in-law of the deceased was a material witness who could have thrown light on the incident, and by not examining her, an adverse inference is required to be drawn against the prosecution case. For this, learned advocate relies upon a decision of the Apex Court in the matter of NARAIN V. STATE OF PUNJAB reported in AIR 1959 SC 484. Paragraphs 12 and 13 of the judgment were cited by the learned advocate. In the above said decision, the Apex Court has indicated the test as to who can be material witness. The Supreme Court has observed that the test is whether a particular witness is essential to the unfolding of the narrative upon which the prosecution is based. The test is not whether he would have given evidence in support of the defence. Now, reverting back to the facts of the case it is clear from statement Ex.24, the deceased stated that her mother-in-law came after the incident and attempted, after wrapping quilts, to extinguish fire on her body. As said above, we are inclined to accept the evidence of Ex.24, the statement of the deceased. This state of evidence clearly denotes that the mother-in-law was never a material witness because she reached to the place of incident after the incident took place. While the prosecution case was based on a story that the husband poured kerosene on his wife and set her ablaze. Mother-in-law was not the witness to this fact. In the first place, mother-in-law is not a material witness, so drawing of adverse inference is out of place and secondly

we can not shut our eyes to the hard reality that the mother would naturally shelter her son and would not say to the doctor that the wife was burnt by her son. Moreover, when the statements of the deceased in the form of dying declarations at Ex.20 and Ex.24, on scrutiny, are found reliable and acceptable, the case-history given by the mother-in-law to the doctor can safely be discarded. Further witness Jashodaben has aforesaid made clear that mother-in-law came to the place of incident after Jashodaben called her. The panchnama of scene of offence Ex.10 makes it clear that the incident occurred in the middle of the room where fire place for cooking was in southern corner. Reading the panchnama Ex.10, it becomes clear that fire place for cooking was not near the exact place of incident. Panchnama Ex.10 makes it clear that kerosene was on the floor in the circumference of two feet. These two important facts rule out the probability that deceased died while preparing cooking fire, as indicated by the defence. It is the duty of the Court to find out the truth from the evidence. There may be embellishment in the evidence. There may be interwoven falsity in the truth enshrined in the evidence. This must be tested by the Court through the exercise of segregating truth from falsehood. After undertaking this exercise on appreciation of evidence, the Court must discard the falsity and truth must be carved out. Appreciating the evidence of the Doctor, Executive Magistrate and Jagdevsinh PW 8, we find the extreme truth in the statement of the deceased and therefore when there is weighty evidence in the shape of dying declarations as to the cause of death, the other petty mingled falsity like the statement of the mother-in-law before the doctor recorded in the case-history must be discarded. We do not find any merit therefore in this contention that since the mother-in-law of the deceased is not examined an adverse inference can be drawn against the prosecution case. Therefore, we also refuse to accept the contention on behalf of the learned advocate for the appellant that there are two versions in the prosecution case - one is given by the deceased and another given by the mother-in-law of the accused. On scrutinizing the facts, it clearly appears that there are no two versions in the prosecution case. The prosecution case contains only one version and that is, the husband burnt the wife. The version of the mother-in-law is a falsity and requires to be discarded. The question of accepting the version benefitting the accused would not arise at all. The prosecution was able to establish the case containing one version only.

24. Lastly, it was vehemently urged on behalf of the

learned advocate for the appellant that it is a case falling under Section 304 Part I or Part II and not under Section 302 of the Penal Code. It was further urged that the accused appellant was in a drunken condition and on a spur of moment of provocation, it appears that he poured kerosene and set ablaze the victim. In support, learned advocate for the appellant cited the following cases of the Apex Court:-

- (1) KALU RAM v/s. STATE OF RAJASTHAN (reported in AIR 2000 S.C. 3630)
- (2) HARI SHANKAR v/s. STATE OF RAJASTHAN (reported in AIR 1999 S.C. 2629)
- (3) MAVILA THAMBAN NAMBIAR v/s. STATE OF KERALA (reported in AIR 1997 S.C. 687)
- (4) SUDHIR SAMANTA v/s. STATE OF WEST BENGAL (reported in AIR 1998 S.C. 289)
- (5) BALDEV SINGH & ANR. v/s. STATE OF PUNJAB (reported in AIR 1996 S.C. 372.)

We are unable to accept the contention of the learned advocate for the appellant on this score also. The above cases of the Apex Court are on the facts of those cases, wherein, in each of the above case, on fact, the Apex Court found that there was no intention to kill on the part of the accused or premeditation in committing the crime. But, in this case when we scanned through the statement of the deceased, it is clear that the appellant came in drunken condition, asked for the meal to the extent that he demanded the meal whether it was prepared or not. The victim had only prepared 'rottilas' and not vegetables. After taking the meal of 'rottilas' without vegetables the accused appellant picked up quarrel with the deceased, poured kerosene on her body and set her ablaze. Not only that, thereafter the accused run away and could be apprehended only on 19th February, 1994 (i.e. after five days of the incident). This series of incidents, which is proved beyond doubt by the prosecution clearly denotes that the act of the appellant was premeditated and with an intention to kill. It is pertinent to note here that the Investigating Officer Pratapsinh PW 13 deposed that the accused was apprehended on 19th February, 1994 because he was absconding. We do not find any cross-examination on this point except suggestions and denials. Even, the accused has not offered any explanation in his further statement under Section 313. Having regard to this fact and having regard to the manner in which the incident has occurred, one can not accept for a moment that the incident had occurred without any intention on the part of the appellant or on a spur of a moment, or the incident

occurred on sudden quarrel. It is amply proved by the prosecution beyond doubt that when the appellant reached at the home he was in a furious mood to ask his wife to serve meal for him whether it was prepared or not. Moreover, after taking the meal he committed this crime, which clearly attributes necessary intention of the accused. The trial Court rightly convict the accused under Section 302 of the Penal Code.

25. For the foregoing reasons, we do not find any reason to interfere with the judgment of the trial Court, which is impugned in this Appeal. In the result, this Appeal stands dismissed.

(Y.B. Bhatt, J.)

(J.R. Vora, J.)

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